RECENT IMPORTANT DECISIONS

AGENCY—UNDISCLOSED PRINCIPAL—STATUTE OF FRAUDS—PAROL EVIDENCE RULE.—The plaintiff, who claimed to be the vendor, sued for the specific performance of a contract for the sale of land. The contract of memorandum did not contain plaintiff's signature nor in any way disclose his name, but was signed by persons alleged to be agents of the plaintiff *Held,* since the Statute of Frauds requires the names of the parties to appear on the contract or memorandum, and since the plaintiff on the face of the contract does not appear to be a party thereto, relief must be denied. *Moore v. Adams* (Ga., 1922), 113 S. E. 383.

In accord with the principal case are: *Chase v. Savage Silver Mining Co.,* 1-2 Nev. 533; *Newcomb v. Clark,* 1 Denio (N. Y.) 226; *Fenly v. Stewart,* 5 Sand. (N. Y.) 101. The overwhelming weight of authority, however, is the other way, to the effect that in simple contracts the agent may sign his own name, no principal's name or fact of agency appearing in the contract, and parol proof will be admitted to show agency so as to bind the principal or allow him to sue on the contract, and this, whether the contract is or is not required to be in writing. *White v. Dahlquist,* 179 Mass. 427; *Dykers v. Townsend,* 24 N. Y. 57; *Higgins v. Senior,* 8 M. & W. 834. See MECHEM ON AGENCY, §§ 1732, 1733, and cases there cited. The foregoing rule is inapplicable to instruments under seal, *Briggs v. Partridge,* 64 N. Y. 357, and to negotiable instruments, *Stackpole v. Arnold,* 11 Mass. 27; *Arnold v. Sprague,* 34 Vt. 402, 409. The elaborate *dictum* in *Higgins v. Senior, supra,* which shows the law in England, lays down the doctrine, impliedly denied in the principal case, and the courts in America with but few exceptions have followed it. The New York rule is now that of the majority, *Dykers v. Townsend, supra,* although some of the early cases, *Newcomb v. Clark* and *Fenly v. Stewart, supra,* went the other way. In the last mentioned case the general rule is attacked, and various decisions upon which the doctrine is supposed to rest are very closely and carefully examined, and it is denied that it is supported by them, while it is forcibly attacked on grounds of principle. The doctrine of *Higgins v. Senior, supra,* it is submitted, not only contradicts the written instrument, thus violating the parol evidence rule, but it also nullifies the Statute of Frauds. Under the rule in that case, a contract which says that A is the vendor is, by the admission of parol evidence, metamorphosed into one in which B is the vendor. If a party can be added by parol proof, why not add also to the amount of land sold or the price? And if one item may be added to or varied, why not add to or vary all the particulars of the contract? But whatever ground there may have been originally to question the legal soundness of the doctrine, it is now too firmly established in most jurisdictions to be overthrown.

BILLS AND NOTES—INDIFFERENCE OF PURCHASER AS TO RIGHTS OF MAKER. —The plaintiffs, transferees of a promissory note, alleged and offered evi-

dence to show conformity to requisites of a holder in due course. The defendant, maker, alleged, and the plaintiffs admitted, lack of consideration and fraud in inception. The evidence of the defendant revealed lack by the plaintiffs of knowledge of, or inquiry concerning, the standing of the maker, the fraud in inception, the matter of consideration, and the genuineness of the signature. It also showed the plaintiffs' knowledge of the payment by the payee of an excessive commission to the plaintiffs' transferror for sale of this note nine months before maturity. Furthermore, it was shown that the plaintiffs made no inquiry concerning the financial status of the payee, although furnished with a statement thereof which was ambiguous and tended to indicate improper practices. Tht jury, upon instruction, found for the plaintiffs; and from judgment the defendant appealed. *Held,* where the evidence shows indifference on the part of the purchaser as to whether the note was honestly obtained from the maker, he is not a purchaser in good faith; and the question of good faith is for the jury. Reversed. *Shawnee State Bank v. H. E. Vansyckle* (Neb., 1922), 189 N. W. 607.

The matter of what knowledge by the purchaser of extraneous facts of infirmity in the instrument will destroy his rights as a holder in due course has been the subject of much controversy. In England, the test was bad faith until 1824 (*Hinton's Case,* 2 Show. K. B. 236; *Lawson v. Weston et al.,* 4 Esp. R. 56); but in that year *Gill v. Cubitt,* 3 Barn. & Cress. 466, decided that the basis should be the presence of "circumstances which ought to have excited the suspicions of a prudent and careful man." This rule held sway for a time, but in 1836, in the case of *Goodman v. Harvey,* 4 Ad. & El. 870, the rule of *mala fides* was restored, and such is the settled law of England today. American courts up to 1857 tended to support the "suspicious circumstance" rule laid down in *Gill v. Cubitt* (cf. *Ayer v. Hutchins,* 4 Mass. Rep. 370); but after the decision in *Goodman v. Simonds* (U. S., 1857), 20 How. 343, the American cases followed the doctrine of *mala fides,* except in Georgia, where the old rule is still in effect by statute, Georgia Civil Code, 1911, § 4291. Nebraska has adopted § 56 of the Uniform Act, which has laid down this rule. See Compiled Statutes of Nebraska, Annotated, 1911, § 3855A. The great majority of the cases interpret bad faith as the knowledge of such facts as would put one upon inquiry. *Goodman v. Simonds, supra.* However, some assert that the above explanation results in an argument in a circle, and that the true test should be that there is knowledge of facts which make the purchaser's conduct in buying a claim against the maker the taking of an unconscionable advantage, there is the dishonesty which makes bad faith. 18 MICH. L. REV. 355-377. But at any rate, under the existing rule, a high degree of knowledge is required by all the authorities before one is said to be put upon his inquiry. Facts must be known which create a belief or an unavoidable inference. *Park v. Johnson,* 20 Ida. 548; *Chapman v. Rose,* 56 N. Y. 137; *Comstock v. Hannah,* 76 Ill. 530. Nebraska itself has followed this principle. *First State Bank of Pleasant Dale v. Borchers,* 83 Neb. 530. Then, upon the basis of Nebraska's own rule and according to the explanation thereof by her own courts, we

must say the test laid down in the instant case is of dubious soundness. Here the plaintiffs had no knowledge whatsoever of suspicious circumstances attending the negotiation of the note; and there is clearly no duty to investigate when nothing irregular is known. As to the matter of knowledge of a paper indicating improper practices by the payee, it has been held that knowledge of the shady reputation of the assignor or the financial embarrassment of the maker is not sufficient to necessitate inquiry. *Vaughan v. Brandt,* 21 Ida. 628; *Setzer v. Deal,* 135 N. C. 428; *Baruch v. Buckley,* 151 N. Y. Supp. 853. Then surely the ambiguous statement here did not. The only remaining ground upon which the presence of bad faith could possibly be predicated is the fact of knowledge of an excessive commission for the sale of the note. Authority cited above clearly shows that such a small circumstance is not to be considered bad faith. In this case mere indifference is scarcely made out, but even if it were it would seem that such a test of bad faith would seriously impair the free circulation of negotiable paper.

CARRIERS—LIABILITY FOR BAGGAGE UNACCOMPANIED BY PASSENGER.—Plaintiff purchased a railway ticket for the use of his wife, by virtue of which a trunk was checked for carriage from Memphis to Childress, Texas. Plaintiff and his wife made the trip by automobile. The trunk was never found. Defendant claims he is liable only as a gratuitous bailee, since the plaintiff's wife did not travel upon the same train with the baggage. *Held,* the defendant is liable for the full value of the trunk as a common carrier. *Payne, Agt., v. Boswell et ux.* (Texas, 1922), 241 S. W. 761.

The decision is in accord with the modern view that, in the absence of a special contract, the carrier is liable for the loss of the baggage as a common carrier, where the owner secures passage in good faith, regardless of whether he travels upon the same train or not. Modern means of transport have so changed that the passenger rarely sees his baggage during the journey, and under the checking system there is little reason in requiring him to accompany the baggage for the purpose of identification. *McKibbin v. Wisconsin Central Ry. Co.,* 100 Minn. 270; *Larned v. Central Ry. Co.,* 81 N. J. L. 571, noted in 9 MICH. L. REV. 707; *St. Louis, I. M. & S. Ry. Co. v. DeWitt,* 115 Ark. 578; *Caine v. Cleveland, Cinn., Chicago & St. Louis Ry. Co.,* 217 Mich. 231, noted in 20 MICH. L. REV. 787 and 31 YALE L. J. 664. One view holds the carrier liable as a common carrier, though the purchaser of the ticket upon which the lost baggage was checked never intended to take passage upon the train. The fact that the owner of the baggage does not take advantage of one-half of the dual contract of carriage (passenger and baggage) does not change the carrier from a bailee for hire to a gratuitous bailee. *Alabama Great Southern R. R. v. Knox,* 184 Ala. 485, 49 L. R. A. (N. S.) 411. The older view is that the carrier is a gratuitous bailee if, through no fault of the carrier, the passenger did not accompany the baggage upon the same train. *Collins v. Boston & Maine Ry. Co.,* 10 Cush. (Mass.) 506; HUTCHINSON, CARRIERS, Ed. 3, § 1275; *Marshall v. Pontiac, Oxford & Nor. Ry. Co.,* 126 Mich. 45, 55 L. R. A. 650; *Wood v. Maine Central Ry. Co.,* 98 Maine 98; *Perry v. Seaboard Air Line Ry.,* 171 N. C.